

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ORLANDO GARCIA,  
Plaintiff,

v.

QUONG FOOK TONG,  
Defendant.

Case No. 21-cv-05539-JCS

**ORDER TO SHOW CAUSE**

Plaintiff in this case asserted claims under California’s Unruh Act and Title III of the Americans with Disabilities Act (“ADA”) based on accessibility violations in connections with a business located at 751 Clay Street, San Francisco CA, called Tarta’s Secret. The Court declined to exercise supplemental jurisdiction over Plaintiff’s state law claim, leaving only the ADA claim. Although Plaintiff contends the business was open when he visited it in June 2021, the pictures he produced in his initial disclosures reflect that on July 26, 2021 – the date his investigator visited the business, *see* Whang Decl., Ex. A (dkt. no. 16-3) – the business was boarded up and closed. Because the only remedy available to Plaintiff under Title III of the ADA is injunctive relief, the permanent closure of Tarta’s Secret would render prospective relief moot and deprive the Court of subject matter jurisdiction over this case. *Rivera v. Crema Coffee Co. LLC*, 438 F. Supp. 3d 1068, 1073–74 (N.D. Cal. 2020) (citing 42 U.S.C. § 12188; *Kohler v. Southland Foods, Inc.*, 459 F. App’x 617, 618 (9th Cir. 2011); *Wander v. Kaus*, 304 F.3d 856, 858 (9th Cir. 2002) (“Damages are not recoverable under Title III of the ADA—only injunctive relief is available for violations of Title III.”); *Bayer v. Neiman Marcus Grp., Inc.*, 861 F.3d 853, 864 (9th Cir. 2017) (“A request for injunctive relief remains live only so long as there is some present harm left to enjoin.”) (quoting *Taylor v. Resolution Trust Corp.*, 56 F.3d 1497, 1502 (D.C. Cir. 1995)) (internal quotation marks

omitted)). Accordingly, Plaintiff is ORDERED TO SHOW CAUSE why this case should not be dismissed on the basis that the business that is the subject of Plaintiff's claim is permanently closed. **Plaintiff shall file a response, including evidence that Tarta's Secret continues to operate as a business, no later than July 22, 2022.**

**IT IS SO ORDERED.**

Dated: July 15, 2022

  
JOSEPH C. SPERO  
Chief Magistrate Judge

United States District Court  
Northern District of California